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NOTES OF THE WEEK

Additional Cost—and Service

It is just seven years since the price of the *Justice of the Peace* was increased and we regret that we can no longer put off asking our subscribers to pay a little more. Since 1951 almost every other journal and newspaper in the Country has taken this step once or even twice. We have managed to avoid it up to now but increased costs in all directions have become so heavy a burden that we can no longer carry them unaided. Subscriptions registered before July 1, 1958 will not, of course, be increased until they run out in six months or a year, as the case may be. Those registered on or after July 1, will be at the new rates.

On the other side of the coin we would draw attention to a new free weekly supplement starting with this issue. Its objects are threefold. First, to improve the Paper itself by omitting from it all matter of passing interest. More space will then be available for say, Practical Points. Every aspect of current and impending legislation will be available in our new Supplement.

Secondly, to provide a full and up-to-date Digest of Cases. Those of sufficient importance will, as in the past, be the subject of editorial comment in the *Justice of the Peace* while some will be found dealt with under Weekly Notes of Cases and subsequently reported in full in our Reports. The Digest of Cases may not necessarily indicate new law but it will show current legal trends and its scope will be wider than anything attempted up to now.

Thirdly, to provide in this new Service Supplement a bird's eye view of sentences imposed in all parts of the Country. We are sure that this will be welcomed by all whose interest is in the lower courts. It is, we believe, the first time a methodical nation-wide approach has been made to the subject of sentences—other than the purely statistical method. Uniformity in these matters is clearly impossible but what is going on elsewhere must be of interest, and may well be a guide, to us all.

Magistrates' Courts Act, 1957, Procedure for Careless Drivers

In *The Western Morning News* of May 14, there was a report of a case in which a defendant who " pleaded guilty by letter " to driving without reasonable consideration for other road users was fined £5. His offence arose when he drove from a minor across a major road directly in front of an invalid car which was being driven along the major road. The driver of the invalid car, in avoiding the other vehicle, overturned his car. The defendant's explanation was that he was studying a sign post and failed to see the invalid car.

There is no doubt that the offence of careless driving is one which a court has jurisdiction to try by the procedure under the Act of 1957 since it is a summary one which is not also triable on indictment and the accused is not liable to be sentenced to imprisonment for a term exceeding three months. It has to be remembered, of course, that even on a first conviction the offender is liable to be disqualified for one month and that no disqualification may be imposed unless there has been an adjournment to give the defendant the chance to attend.

Having regard, however, to the importance of discouraging all forms of bad driving in order to try to reduce the number of road casualties we do wonder whether this procedure of pleading guilty by letter is the most suitable one for such cases. Apart from the sentence imposed, by the court there is nothing in that procedure to give either to the defendant or to the public any idea that such offences are not to be treated lightly and we think that an appearance in court, possibly at some inconvenience to himself, may make more impression upon the defendant. We do realize that there is to be balanced against this the convenience of the police and their witnesses, but we do not consider that this should be in all cases the overriding consideration. Those who have to decide which procedure should be adopted may well ask themselves whether it is not in the

general interest that, save in exceptional cases, such defendants should be required to appear, which means that either they must attend in person or must go to the trouble of instructing an advocate to represent them.

Rival Gangs

We have by no means reached the point at which we need compare our gangs of so-called Teddy boys with the American type of gangster, but they continue to cause increasing trouble, and the public interest requires that every possible step should be taken to break them up. One disquieting feature of their activities is the practice of rival gangs from different localities raiding the district of their enemies, as they regard them, and indulging in violent attacks, often with weapons. Another feature is the practice of seeking a victim who is in a youth club where he ought to be entitled to feel safe and attacking him there, at the same time upsetting the whole of the club and its staff.

It is disquieting also to read accounts of court proceedings in which injured persons called to give evidence appear to be terrified to do so, and account for injuries by telling an improbable story of an accident or by professing not to remember exactly what happened.

As most of the offenders are in their teens, magistrates are reluctant to send them to prison, but we have recently read of some prison sentences, and it is not easy to suggest an effective alternative for some of these offenders. The detention centre, where available, may be suitable punishment, but one hears of shortage of vacancies, and consequent delays. Some offenders have been bound over, and if this does not prove effective the question of requiring sureties for good behaviour might be considered.

While it might make matters worse if members of the public took the law into their own hands, it is right that they should in every possible way co-operate with the police. *The Birmingham Post* recently reported that a number of residents on one estate, where these youths had been behaving objectionably on a number of occasions turned out with their motor cars and motor cycles in order to assist the police in chasing the offenders, who had scattered and run after a street battle.

Salaries and Wages

That a bank clerk should receive £6 a week and a labourer £17 seems incongruous, and when the contrast is provided by the same man in the two capacities it becomes even more striking.

The Birmingham Post reports the case of a man who, at the age of 21, was clerk in charge of a sub-branch of a bank at a salary of £6 a week, and who, while suspended because of inquiries into irregularities, obtained work as a labourer and earned £17 a week. He was prosecuted at the Derby Assizes on charges of forgery, embezzlement and falsification and sentenced to three years' imprisonment, being now 24 years old. He was stated to have misappropriated over £4,000 in two years.

The learned Judge said he was not going to criticize the amount of the salary paid to a young man in such a position, possibly as a trainee. It might be a proper salary. Neither do we offer any criticism of it, because we feel that the extremely high wage the young man obtained as a labourer is more open to criticism. The report does not say in what industry he was engaged, or what hours he worked, but it seems most probable that having been a clerk he would not be a skilled labourer. It must be a matter of supply and demand, but such disparity between the salary and the wages creates problems.

Another extraordinary feature of the case is the magnitude of the defalcations. If this young man had found his salary not quite enough for his needs, that would have explained, though it could not justify, misappropriation on a small scale. Over £4,000 in two years is an altogether different thing, but nowadays many young people think in thousands where their elders would have thought in hundreds. It is a disquieting sign of the times.

Mistaken Identity

Readers of Mr. C. H. Rolph's book *Personal Identity* must have been impressed by the unreliability of many, if not most, people when it comes to a question of identification. Identification parades are without doubt conducted with scrupulous fairness, but can easily lead to mistakes, not through any fault of the police, but because of the tendency of a witness to assume that the suspect must be among the men on parade, so that he chooses the one most nearly resembling the one he has in mind. When there is no identification parade, but a suspect is given into custody by someone who identifies him as the man who committed some offence some time ago, there is no less risk, as such a case as that of Adolf Beck showed.

The mistake of identity may, and often is, cleared when evidence is given and tested in court, so the number of wrong convictions may be small, but the unfortunate victim of the mistake may already have suffered anxiety and received distressing publicity. The fact that he has been accused and brought before a court may have received considerable notice in the press, but there may not always be equal publicity given to subsequent proceedings at which the accused has been completely cleared. That means that some suspicion about his innocence may remain.

We are glad to see the amount of publicity given in the press to the case of a man of unimpeachable character who was cleared of all suspicion after a remand on bail, on charges of stealing and false pretences. Fortunately during the remand another man was arrested on the same charges and was stated to have admitted his guilt. It was described as a case of mistaken identity, and he was acquitted, the chairman saying, in time-honoured words, that he left the court without a stain on his character.

Magistrates' Courts Act, 1957

We have every reason to believe that the new procedure for pleading guilty by letter is working well and that considerable time and expense are being saved. The police soon learn what is the attitude of the court towards the acceptance of such pleas in certain classes of case, and we do not often read of any criticism of the way in which the Act is being worked.

A case reported in the *Daily Express* of May 31 seems a little puzzling but no doubt there is an explanation. In this instance the prosecution was not by the police but by the railway authorities, a man being summoned for avoiding payment of a 6*d*. fare. According to the newspaper, the man wrote pleading guilty, and yet a police-woman travelled from Bristol to Grays at a cost of £2 4*s*. 6*d*. in fares and of a night at an hotel in addition. She was called to prove a statement made by the defendant admitting the offence.

It may be that the prosecution did not proceed under s. 1 of the Act of 1957, or it may be that the defendant's letter arrived too late for the prosecution to be informed in order that the

witness need not be called. The result at all events was a waste of time and money.

In another case reported in *The Yorkshire Post* the chairman of Sleaford magistrates' court commented on the desirability of employing the new procedure, in a case in which it was stated that each of two executive officers of the Ministry of Agriculture had travelled 100 miles in order to give evidence about the posting of forms in a case against a farmer accused of failing to provide returns for agricultural statistics. The farmer pleaded guilty by letter and was fined.

The solicitor who prosecuted stated that the Ministry regarded the offence as serious and gave his reasons, which no doubt were the reasons why the new procedure was not followed.

The chairman said that the bench thought it might be possible for the Ministry of Agriculture to employ the new magistrates' courts procedure as the police did. This would enable witnesses to be stopped when pleas of guilty were entered. Men from the Ministry could then be better employed he said, and would not have to spend so much time travelling.

A Matter for Observation

A case which has no legal significance has been brought to our notice by the learned clerk of the magistrates' court concerned, and we refer to it here because we think that it illustrates how unobservant people can be and how, therefore, evidence which may appear to be false or incredible may be the result of the failure of witnesses to observe accurately.

The defendant in the case was summoned for failing to have the index mark affixed to his car as required by the Vehicles (Excise) Act, 1949. What he had were two index plates, one front and one rear which showed different index marks, the former VAL 749 and the latter VAL 479. The rear plate was the correct one. The point of the matter was that the car had apparently borne these two plates for the whole of its life, since July, 1956, having been in the hands of one owner for 18 months and of the defendant for about five months. Neither of them had ever noticed that the two plates were different and apparently no one had ever called their attention to the difference. The car must have been parked on a large number of occasions in various places for varying periods and no police officer had spotted the mistake. The error was brought to light when a police officer happened to see the car pass and casually noticed the front index number. He turned, for no particular reason, to watch its progress and he was observant enough to notice the difference when he saw the rear plate. A little later he saw the car parked and, in due course, the defendant appeared before the court. Our readers will not be surprised that the result was that he was discharged absolutely on payment of 4*s*. costs.

Separation and Maintenance

Speaking at the Mansion House on the occasion of the dinner at the annual conference of the Justices' Clerks' Society Mr. A. J. Chislett, president of the society, quoted some striking statistics about husbands and wives living separately and the consequences as affecting not only them and their children but also the general public. As he showed, these are not only personal problems, they constitute a national problem.

The latest statistics available showed the number of separation and maintenance orders in force to be 170,000. Receipts by collecting officers under these orders last year amounted to £10 million, payments by the National Assistance Board to separated wives amounted to £7½ million. Five thousand husbands were sent to prison in respect of arrears at a cost of £5 11*s*. a week each. During the same period the expenditure by local authorities on child care was £15¾ million.

This is a disturbing state of affairs. The results of the break-up of a matrimonial home are always serious and sometimes disastrous. They often lead to irregular unions and the birth of illegitimate children, and in any case, as Mr. Chislett pointed out, a meagre pay packet may be quite insufficient to provide for two separate homes. These are all obviously personal problems, but the above quoted figures reveal another no less serious aspect.

Possible Remedies

The increase in the number of separated couples is thought by many people to be due to a lessening of the respect for the marriage bond, to the light-hearted way in which some young people enter into it, and their disinclination to put up with what has been judicially described as the wear and tear of married life. The remedy is no doubt to be found in restoring as much as possible of the old idea of marriage as a union for life, to be broken only for the gravest causes.

Mr. Chislett regretted the failure to apply the provisions of the Legal Aid and Advice Act to matrimonial proceedings in the magistrates' courts, and he also urged the desirability of spending more public money on marriage guidance and counselling so that parties would be better prepared for marriage, and approach it in the right frame of mind. Where the marriage is in danger of breakdown reconciliation can often be effected. This is accomplished in many instances by probation officers. Legal aid and advice can, if freely available, often have the same happy result.

Mr. Chislett has done a service by ascertaining the figures and by assembling them in such a way as to show the magnitude and importance of this matter of separated couples.

The Civil Judicial Statistics

Civil litigation in England and Wales showed a general decline in 1957 according to the latest Civil Judicial Statistics (Cmnd. 434). Although in the Chancery Division proceedings increased by 172 to 8,958, the High Court as a whole showed a five *per cent.* decrease as compared with 1956. In the Queen's Bench Division there was a drop of 6,155 to 80,312 and in the Probate, Divorce and Admiralty Division a decrease of 581 to 28,485. The number of matrimonial petitions continued to fall. In 1957 there were 28,062, a decrease of 578 as compared with 1956. Divorce petitions (desertion) totalled 9,910 and those for cruelty 5,117. There were also 177 petitions for lunacy and 94 petitions for presumed decease. Application for leave to present a petition for divorce within three years of the date of the marriage was made in 220 cases and in 163 cases the petition was allowed. The number of decrees *nisi* for dissolution of marriage was 25,489. Of these, 11,481 were on husbands' petitions and 14,008 on wives' petitions. Seventeen thousand and forty-one of the above proceedings were heard at divorce towns (16,113 undefended). Besides these 573 were disposed of at Assizes. Matrimonial causes heard outside London in 1957, therefore, totalled 17,614 whilst 8,909 were heard at the Royal Courts of Justice in the Strand.

The Court of Appeal showed a mild increase in legal traffic as over 1956. There were 745 appeals set down in this

Court—an increase of 83. Of this number 255 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 359—a decrease of 19. Appeals to the House of Lords during 1957 totalled 33 as compared with 35 in 1956.

County court proceedings increased by 20 *per cent.* from 904,475 to 1,081,451. Of this total, however, 65 *per cent.* (679,121) were determined by consent or on admission or in default of appearance or defence and two *per cent.* (24,391) were determined on hearing. The remaining 33 *per cent.* (341,858) were struck out, withdrawn, paid or otherwise disposed of before hearing. The 24,391 actions determined on hearing comprized 15,819 which were determined by a Judge, 8,555 by a registrar, and 17 by an arbitrator appointed by a Judge under s. 89 of the County Courts Act, 1934.

There was a general shrinkage of proceedings under the Legal Aid and Advice Act, 1949. The number of applications received in 1957 was 38,397 contrasted with 41,020 in 1956. Of the applications considered 24,368 were granted (*cp.* 26,488—1956) and 10,827 refused (*cp.* 10,926 in 1956). Certificates issued totalled 20,894 compared with 22,392 for 1956.

For civil circuit work the busiest courts in 1957 were the Northern and Midland Circuits with 837 and 479 actions for trial respectively.

Problems of Delivery and Collection

A woman member of Parliament has suggested to the Postmaster-General that householders who have a front garden should be required, or at least invited, to provide a letter box at the front gate. This was apparently suggested out of kindness to the postman, to relieve him of the need for walking up the garden path when there were only ordinary letters to deliver. There was a casual reference to the well-known antipathy of dogs and postmen. The Postmaster-General's reply indicated that the garden path was one aspect of a problem which was already being considered seriously. If on the average it takes one minute to unlatch the garden gate and walk to the front door and back, this means half an hour lost in a street of 30 houses, where each house receives a letter. Like other employers, the Postmaster-General is faced with the problems of rising wages, and the reluctance of young able-bodied men to take up this sort of work. The suggestion in Parliament led to protest in the newspapers, on the ground that it was better for an able-bodied man to walk up the path when paid to do so than for a householder, who may be old or infirm, to walk down and fetch the letters. There are arguments on both sides, which need to be balanced. We refer to the matter because of its analogy with the problem of the dustbin. When local authorities can persuade householders to put bins just inside the gate, or (often illegally) upon the highway, time and money are saved in the typical suburban street where houses are set back; all the more so in a country town where a large proportion of houses stand in fair sized grounds. The Postmaster-General is in a stronger position in some ways than a local authority, because there is no enforceable obligation upon him to deliver letters, whereas local authorities in urban areas will normally be liable to a penalty for failure to collect house refuse.

The Postmaster-General's problem has another aspect in large towns. In blocks of flats and offices of the type known to estate agents as mansions, where each tenant has his own front door and there is a common front door open to the public, it used in the 19th century to be customary for the postman to deliver letters to each separate tenant.

Between the wars attempts were made in some postal areas to restrict deliveries within such buildings, unless there was a lift which the postman was allowed to use. This led to controversy, when some property owners alleged an objection by their tenants to this use of passenger lifts. The controversy reached *Punch*; a set of verses was printed which included the lines: "My word, how Aunt Eliza sniffed, she met a postman in the lift." We understand that, in central London at any rate, individual deliveries are still made in this class of property even if there is no lift, and that nowadays most property owners who have lifts sensibly allow them to be used. On the other hand, in the many thousands of large houses converted into flats and offices a single delivery is made at the street door, and internal distribution is arranged by the owners or the tenants. It may be that the Postmaster-General's manpower problem in the blocks of offices and flats in the large towns will have to be solved along this line, which is that followed by local authorities in regard to the house refuse from these composite buildings. It might be possible to argue that the local authority's duty to collect house refuse extended to sending their dustmen up to the top floor of a block of flats, but we do not think this was ever done in practice, even in the early days of development in flats, when dustmen were more numerous and not so well paid as they are today. Aunt Eliza would have had more cause to sniff if she had had to use the same lift as Alfred Doolittle.

Hospital Developments

The Parliamentary Secretary to the Ministry of Health (Mr. Richard Thompson, M.P.) when attending the recent annual conference of the Association of Hospital Management Committees at Southport spoke about the hospital position generally throughout the country. He said about £100 million had been spent on hospital development since the National Health Service was established 10 years ago. Many beds closed through lack of staff have been brought into use. In 1949 there were 448,000 available staffed beds; in 1957 the figure had risen to 477,000. But perhaps the most significant fact was that the beds available have been used to greater effect. The number of in-patients treated rose from 2,937,000 in 1949 to 3,783,000 in 1957. This represents an increase of nearly 30 *per cent.* as against an increase of only six *per cent.* in the number of beds.

There has also been a considerable increase in the use of out-patient departments. New patients seen at consultative clinics have increased by more than 12 *per cent.* In the past there was considerable criticism of the lack of comfort for out-patients and the long waiting time which was often exeri-enced. The Parliamentary Secretary said these matters had been considered with much success. A good deal of attention had been devoted to the problem of reducing waiting time and evolving the most suitable type of appointments system. These questions have been reviewed by the Hospital Organization and Methods Service of the Ministry and it was hoped to publish their conclusions shortly.

On mental health the Parliamentary Secretary said there had been a striking change in the outlook both of the public and the hospitals. People are now more ready to think of mental illness as another form of physical sickness and the old fear and horror of it, was, in his view, gradually giving way to a more enlightened attitude. We cannot help feeling, however, that in this matter further education, especially of the general public, is necessary.

DEFECTIVE GRATINGS AND OTHER PAVEMENT STRUCTURES

An important judgment has been given by the Court of Appeal on the liability for accidents suffered by pedestrians, as the result of defective structures on pavements such as gratings, lights, cellar flaps, and the like: *Macfarlane* v. *Gwalter* [1958] 1 All E.R. 181.

In such cases can the occupier of the adjoining premises, to which the structure belongs, be made liable? Or on the other hand is the responsibility to be thrown on to the local authority in whom the pavements happen to be vested?

Where a street, which will usually include the pavements, is dedicated to the public, the pavements will be taken over by the local authority in the condition in which they are. If any part is in disrepair, or if it should subsequently fall into disrepair, the local authority cannot be made liable for any accident that may result in consequence.

As long ago as 1788, in the case of *Russell* v. *Men of Devon* (1788) 2 T.R. 667, it was held that the inhabitants of a county in whom a bridge was vested could not be made liable for injury caused to an individual on the ground that the bridge was out of repair. It is from this decision that the present-day principle is derived, that a local authority in whom, as successors of the inhabitants, highways are now vested, cannot equally be made liable for injuries or damage caused by disrepair of the highway.

An Instance of "Misfeasance"

Neglect to repair is termed "non-feasance" or failure to act, and it stands on a different footing from what is termed "misfeasance," or acting in a wrongful manner. For misfeasance a local authority will clearly be liable, but not for "nonfeasance." The reason for this distinction is that the earlier statutes of the 19th century, which placed the liability to repair on surveyors and local authorities, were intended merely to provide the means of securing the execution of the necessary work of repair to highways; they were not designed to create any new right of action as against local authorities.

An Instance of "Misfeasance"

As an instance of a misfeasance for which a local authority was accordingly held liable one may note the case of *Penney* v. *Berry* (1955) 119 J.P. 542; 3 All E.R. 182.

There the defendant was the owner of premises adjoining the highway. There was an opening to his cellar in the surface of the pavement, which also was part of the highway. This opening was covered by a metal slab set in a large flagstone. In 1950 the local authority had raised the level of the pavement, and in reconstructing it had placed a concrete surround around the metal slab, which was then made to rest on a concrete ledge. One side of the slab was about *three-quarters of an inch* higher than the pavement instead of being flush with it, and it constituted a public nuisance. The plaintiff tripped over the projecting slab and injured himself, and he sued the owner of the adjoining premises.

The Court of Appeal stated that in their judgment the local authority would have been liable to the plaintiff for the "misfeasance" in resetting the metal slab in this way and not flush with the pavement, had proceedings been brought against them within the time limits set by the Limitation Acts. The Court also held that the adjoining owner, the defendant, was not liable. It was sought to make the adjoining owner liable under the provisions of s. 35 (1) of the Public Health Acts Amendment Act, 1890.

Under this provision all vaults, arches, and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar heads, gratings, lights, and coal holes in the surface of any street, and all landings, flags or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owner or occupiers of the same, or of the houses or buildings to which the same respectively belong.

Object of the Provision

This provision, it will be observed, refers to all the various types of structure one finds in streets and pavements, such as cellar flaps, gratings, coal plates, pavement lights, and other structures, whether they are in the surface or under the street or pavement. The intention of this provision is to cast on the owners or occupiers of these structures, or on the owners or occupiers of the adjoining buildings, for whose use and benefit they exist, the duty of keeping them in repair.

Belong

The provision speaks of the structures "belonging" to a house or building, which means that the structures came into existence and had continued to exist for the sole benefit of the particular house or building, as for instance by providing a means of access to its coal bunkers or cellars, or by providing light through pavement lights to underground rooms, and the like.

The Duty is one as to Repair and Condition

The duty that is imposed by s. 35 of the Act of 1890 on the owner or occupier is, however, one which relates to repair and condition. If the structure itself and its surrounds are in good repair and condition, no liability can attach to the adjoining owner or occupier.

Thus in *Penney* v. *Berry, supra,* the cover itself and the surround and flagstones were all in good repair and condition; what was wrong was the design or lay-out in which they were set, when the pavement was reconstructed. That did not constitute a lack of repair and condition. Accordingly the adjoining owner was held not to be responsible.

The Grating Case

With this case, however, the recent grating case of *Macfarlane* v. *Gwalter, supra,* is in strong contrast.

There a grating in the pavement which admitted light to the cellar window of an adjoining building was in bad condition and constituted a danger to passers-by. The plaintiff, an infant, stepped on the grating and his foot went through it, and he was injured.

The Court of Appeal held that the occupier of the adjoining building, who knew of its condition, was liable under the above provisions of s. 35 (1) of the 1890 Act. That provision cast on him a duty to repair the grating, which he had neglected.

The difference between this case and *Penney* v. *Berry* rests on the fact that in the former there was neglect to repair the structure; in the latter there was no such neglect, the structure itself being in good repair and condition.

Is Occupier's Liability Affected by Dedication of Structure?

The case of *Macfarlane* v. *Gwalter* is of further interest in that it raises the important point, whether any duty was cast on adjoining owners or occupiers in cases where the structure of which complaint was made was part of the highway itself, which had been dedicated to and taken over by the local authority. The Court of Appeal held that the liability of the adjoining owner or occupier for non-repair of the structure was not affected in any way by the question whether or not the structure was so dedicated and taken over. In that case the evidence was clear that the structure was already on the pavement when the pavement and highway were taken over by the authority, but the Court of Appeal held that this fact did not affect the question of liability of the defendant, as occupier of the adjoining premises, to which the grating belonged.

SMOKE AND ITS CONTROL

A broadcast in May by the Minister of Housing and Local Government called general attention to the Clean Air Act, 1956, of which some parts had already been put into operation, and the remaining provisions came into operation on June 1. Circulars and notices issued to the press had already led to some publicity, although we are not sure that householders, or even all the traders who may be affected, have yet realized the obligations and restrictions which may be imposed upon them. Manufacturers and other large users of fuel have realized for years that the production of dark smoke was often a sign of inefficiency, and a great deal of money has been spent upon research and upon training stokers in the use of fuel. The cost of coal has also stimulated a change to other methods which, if not always cheaper, have the advantage, especially for other people, of being cleaner. The two great difficulties, as we understand the matter, about administration of the older law had been the comparative inexactitude of measurement of black smoke (however this was defined), and the impossibility of introducing reforms quickly in the emission of domestic smoke. The Act of 1956 makes an effort to tackle this latter problem, both by enabling local authorities to establish smoke control areas and, as regards new buildings, by a power to make byelaws requiring the provision of such arrangements for heating or cooking as are calculated so far as practicable to prevent the emission of smoke. This is an extended version of s. 5 of the Public Health (Smoke Abatement) Act, 1926, under which local authorities had power in the same terms to make byelaws for new buildings other than private dwelling-houses, and this section was reproduced as s. 104 (2) of the Public Health Act, 1936, and s. 151 (4) of the Public Health (London) Act, 1936. According to our information it was almost a dead letter, because local authorities were unable to specify in such byelaws what had to be done to ensure compliance. One or two attempts were made between 1926 and 1939 to enact a byelaw which would simply have repeated the language of the Act, thus throwing upon the persons affected by the byelaw the burden of discovering how to satisfy the law, but the Minister of Health refused (in our opinion rightly) to confirm a byelaw which did no more than repeat the words of the Act—and there the matter rested until the Act of 1956, which went beyond the earlier Acts in extending the power to private houses. A model byelaw has been prepared for use under the new section which avoids this ground for criticism, so far as it can be avoided in this subject matter. It specifies that only those appliances shall be used which are suitably designed for gas, electricity, coke, or anthracite, or are appliances exempted from s. 11 of the Act by an order for the time being in force.

Further research for purposes of the housing programme of the post-war governments produced new types of fuel, and new types of fireplace or stove for solid fuel. A few smoke control areas have already been declared under s. 11 of the Clean Air Act, 1956, but we do not suppose there is yet much information about the enforcement of smokeless fuel in these zones. Even in those areas it must, we fear, be a long time before the new Act has much effect on domestic fireplaces, although s. 12 authorizes the payment of certain grants for adapting existing fireplaces so as to satisfy the Act. Section 15 authorizes grants for adaptation in some other non-commercial buildings. Possibly legislation will in the end prove less effective than other causes which have been operating since 1946. The high cost of solid fuel and continual complaints about the quality of ordinary coal have led householders (like factory owners) to change to other heating agencies on an unprecedented scale.

The other major difficulty mentioned above, in enforcement of the previous law, was that of measuring quantity and quality of smoke. Before the Act of 1956 there were special provisions about black smoke in s. 103 of the Public Health Act, 1936 (reproducing older sections) and the most precise prohibition was of emitting black smoke, at all or for more than a very short period, such as two minutes in an hour. (This is now to be governed by regulations made under s. 1 (2) of the Act of 1956.) But what was " black " smoke? And where the two minutes or other period had passed, and the smoke was thinning out, at what point did it cease to be black? Black smoke is now to be replaced by dark smoke, as the villain of the piece, but the problem of measurement is in principle the same. For many years the instrument of measurement has been the Ringelmann Chart. This was universally accepted in practice, but many lawyers concerned in these matters have been unhappy over it, because its application involved an element of human observation and therefore of human fallibility. It receives statutory recognition in the Act of 1956, where s. 34 (2) defines " dark smoke " as being smoke as dark as or darker than shade two on the chart. This still involves the human element; it may be doubted whether it gives the degree of precision which there ought to be in defining a criminal offence. The subsection goes on, however, to say that the Minister of Housing and Local Government may by regulations declare how smoke is to be ascertained to be as dark or darker than shade two, and that actual comparison of the smoke with the chart shall not be necessary. The circulars and memoranda so far issued from the Ministry do not say whether the Minister intends to make such regulations; meantime the other part of the subsection (making actual comparison with the chart unnecessary) may enable a court to accept—for example—evidence by photographs or recordings made by scientific instruments, instead of human observation. We notice that an appendix to the circular of February, 1958 (circular 6) advises owners of industrial furnaces to install apparatus which will inform the stoker whether smoke is being discharged, and if so whether it is approaching shade two.

There are British Standard Specifications for this purpose, and for the further purposes of legal proceedings we suppose that methods not depending upon human observation can be devised, if this has not already been done, although it may be that, for some time to come, personal observation will have to be described by witnesses, and will be open in the ordinary way to cross-examination.

The emission of dark smoke, as defined in the Act, is an offence even if it comes from the chimney of an ordinary house, but a note from the Ministry remarks that such chimneys do not often produce smoke equal to shade two. The chimneys of houses are, also, subject to special provisions. (We have spoken of the grants which may be obtained from the local authority for adaptation of existing fireplaces in smoke control areas, in accordance with detailed enactments in s. 12.) Section 24 re-enacts and extends s. 104 (2) of the Public Health Act, 1936, and s. 151 (4) of the Public Health (London) Act, 1936, which had reproduced the provision, mentioned earlier, in the Public Health (Smoke Abatement) Act, 1926. The Minister issued a model byelaw for the purpose of the newly extended power on December 28, 1956, with circular 64 of that year. In the same month he made the Smoke Control Areas (Authorized Fuels) Regulations, 1956, S.I. No. 2023, which declared anthracite, certain briquettes, coke, electricity, gas, low temperature carbonization fuels, and low volatile steam coals, to be authorized fuels for the purpose of s. 11 of the Act of 1956, and in March, 1957, he exempted fireplaces designed for liquid fuel from that section by the Smoke Control Areas (Exempted Fireplaces) Order, 1957, S.I. No. 541. These regulations and order apply only to smoke control areas; the byelaws under s. 24 can be applied equally in those areas and elsewhere. The Minister has, indeed, expressed the hope that the byelaw will prove particularly useful in smoke control areas already defined or to be defined in future; the byelaw would help to ensure that conversion of fireplaces was not necessary in those areas, thus reducing any sense of hardship arising from s. 34 (5), which excludes dwelling-houses erected after July 5, 1956, from the benefit of grants under s. 12.

FOOTPATHS SURVEY

DISPUTED PATHS AT QUARTER SESSIONS

Most local authorities have advanced some part of their Survey of Rights of Way to the provisional map stage, at which landowners may object to quarter sessions.

These notes are intended to give some guidance on the principal points which may arise in making an application or preparing a case for hearing.

I. THE APPLICATION TO QUARTER SESSIONS

The Application

1. (*a*) Only a landowner may apply, *i.e.*, an owner, lessee or occupier of land. A person who disputes the map because it does not show a path which he considers should be shown, has no rights at this stage at all.

(*b*) An application must be made within 28 days of the publication of the *London Gazette* and local newspaper notice of the preparation of the map (s. 31). The Act gives quarter sessions no power to extend the period. It would appear from this that the court only has jurisdiction to hear an application which is made in time.

(*c*) The original application must be served on the clerk of the peace and a copy on the clerk of the surveying authority, *i.e.*, the clerk of the county or county borough council. The notice must specify the land to which the application relates, the grounds upon which it is made and the name of the surveying authority. A copy notice must be served upon other persons interested in the land as owner, lessee or occupier. *See* The Public Rights of Way (Application to Quarter Sessions) Regulations, 1952.

The Declaration Sought

2. The object of an application is to secure a declaration from the court. Section 31 of the Act is so drafted that it does not give the court a roving commission to do rough and ready justice between the parties. In the normal case it must either make the declaration or not make it. It is important, therefore, to ask for the right relief. The four declarations which may be sought are:

(*a*) that there was no right of way at the operative date mentioned in the draft map (the relevant date).

(*b*) that the public rights are incorrectly specified, *e.g.*, that where the map shows a bridlepath, it should only show a footpath.

(*c*) that there is a path, but that it is shown on the wrong route, or that the width is incorrectly shown in the statement accompanying the map.

(*d*) that the public right is subject to a limitation or condition (*e.g.*, a right of way subject to a right to close for a market or fair) or to some different limitation or condition to that shown.

It is worth noting that an applicant cannot succeed under (*a*) unless he can show that there was no public right of way at all over the land (s. 31 (3) (*a*)). There is some point in making an application in the alternatives (*a*), (*b*) and (*c*) above. It often happens that during the course of a hearing, the evidence may raise doubts as to whether the line of the path, its width and classification are correct. An application in the alternatives (*a*) (*b*) and (*c*) gives the court the widest scope, as they can amend the classification, *e.g.*, convert bridleways to footpaths and *vice-versa*, and alter the route, width, etc., under their powers in s. 31 (5). If the application is only made under para. (*a*) the court's only power arises under s. 31 (4) and in effect allows them to amend the route of the path to follow its correct line.

Burden of Proof

3. The hearing in counties will be before the appeal committee of quarter sessions and in boroughs having a separate commission of the peace, before the recorder.

Section 31 (3) provides that the declaration shall be made if certain things are not proved to the satisfaction of the court. This subsection implies that the surveying authority and not the applicants must open the proceedings. Where, however, the application is for a declaration that the way is subject to a limitation or condition, the onus of proof is upon the applicants (*see* s. 31 (6)).

II. THE RIGHTS OF WAY ACT, 1932

User

4. A surveying authority may still occasionally have to establish a public path under the old common rules. For

this reason a note upon the principal differences between proceedings under the common law and under the Rights of Way Act, 1932, will be found in para. 31, *post*. But in the great majority of cases today, the authority will seek to prove its case under s. 1 of the Act of 1932. "This Act provides a new means by which the public may acquire a right of way in addition to the old means of dedication, which be it noted, is still preserved: *see* s. 2 (2). The new means of acquiring it is by prescription for 20 years" (*per* Denning, L.J., *Fairey* v. *Southampton C.C.* [1956] 2 All E.R. 845).

5. The period of 20 years has to be calculated from the time when the right of the public to use the way was first brought into question (*ibid.* at p. 846). The landowner may do this by putting a barrier across the path or putting up a notice. In many cases, of course, nothing like this will have been done. The method of 20 years has then to be calculated backwards from the "relevant date" (to be found in the statement accompanying the provisional map).

In *De Rothschild* v. *Bucks County Council* (1957) 55 L.G.R. 595 the question was discussed, but not decided, whether a right of way can be brought into question only once, or whether it can be brought into question more than once.

6. User under the Act means that the public have walked over the path. "This is the meaning of the short word 'user' in all cases about public footpaths" (*per* Scott, L.J., in *Jones* v. *Bates* [1938] 2 All E.R. 245. But such enjoyment by the public must be "as of right." In *Hue* v. *Whiteley* [1929] 1 Ch. 440, Tomlin, J., defined user as of right as meaning that the users were "believing themselves to be exercising a public right to pass from one highway to another."

Hilbery, J., in *Merstham Manor Ltd.* v. *Coulsdon and Purley U.D.C.* [1937] 2 K.B. 77, quoted from the Judgments in *De la Warr (Earl)* v. *Miles* (1881) 17 Ch. D. 535, to the effect that the actual enjoyment must be open, not by force and not by permission from time to time given. Scott, L.J., in *Jones* v. *Bates* adopted this phraseology. "It is," he went on to say "doubtless correct to say negatively they import the absence of any of the three characteristics of compulsion, secrecy, or licence—'*nec vi, nec clam, nec precario*,' phraseology borrowed from the law of easements" (p. 245).

7. User under the Act must be "without interruption." This is not the same as continuous user. There may be gaps in the user produced by the surveying authority. This will not matter so long as there has been no interruption of the enjoyment of the right of passage. "A mere absence of continuity in the *de facto* user proved will not prevent the statute from running . . . No interruption comes within the statute unless it is shown to have been an interference with the enjoyment of the right of passage" (*per* Scott, L.J., in *Jones* v. *Bates* at p. 246).

See also *Lewis* v. *Thomas* [1950] 1 K.B. 438, where the locking of a gate at night to keep cattle in was held not to amount to an interruption within the meaning of that word in the Act of 1932: and paras. 14 and 15, *post*.

Documentary Evidence

8. Besides evidence of user, the surveying authority are likely to produce such old maps, etc., as may be in their possession. These maps may be produced to show that the path has physically been in existence for a long time: or the surveying authority may be relying in the alternative on a common law dedication when old maps have always been of value.

The admissibility of these records is now governed by s. 3 of the Rights of Way Act, 1932. This provides that the court shall take into consideration any map, plan or history of the locality or other relevant document that is tendered in evidence. The weight to be attached to each document is such as the circumstances justify, including the age of the document, the status of the author or map maker, the purpose of the document, and the custody from which it is produced. These provisions remove the uncertainty which often existed at common law as to what was admissible and what was not.

9. As a general rule, a map is not evidence of whether a path is public or private. It is only evidence as to what the map-maker saw. This is so even if the map is of the highest repute, *e.g.*, the Ordnance Survey (*A.-G.* v. *Meyrick & Jones* (1915) 79 J.P. 515).

But where one of the objects of preparing a map was to show the public reputation of roads and paths, the map will be admissible as evidence of reputation—subject to the map-maker being reputable, the custody being sufficient, etc. (*Pipe* v. *Fulcher* (1858) 1 E. & E. 111). If the map has been prepared in pursuance of some public duty, the weight to be attached to it will be greater (*North Staffs Railway Co.* v. *Hanley Corporation* (1909) 73 J.P. 477).

A tithe commutation map and the deposited plans of a proposed railway were held to be admissible as evidence of public repute in *A.-G.* v. *Antrobus* [1905] 2 Ch. 193. But the tithe map is not evidence of the exact extent of the public right (*Copestake* v. *West Sussex County Council* (1911) 75 J.P. 465). A road is not tithable, but the makers of the map were not required to distinguish between public and private roads, as the basis of the exemption from tithability was the barrenness of the land.

A map attached to an inclosure award showing ancient highways is good evidence of reputation, but it is not evidence as to the boundaries of the highway (*R.* v. *Berger* [1894] 1 Q.B. 823.) Inclosure awards may not only show ancient roads but invariably award certain public roads and paths. These awarded paths require separate consideration (*see* para. 28, *post*).

10. Beside the maps already referred to, the records most commonly of assistance in establishing the existence of a public right of way are likely to be the following:

(*a*) Minute books of parish councils and other councils, *e.g.*, the rural district or county council.

(*b*) Surveys of paths made by the parish council or the rural district council. Such surveys were commonly undertaken after the passage of the Act of 1932.

(*c*) Books of rambles and public walks.

(*d*) Maps deposited by owners under s. 1 (4) of the Act of 1932 showing which paths were admitted and which not admitted to the public rights of way.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

List of Recommended Domestic Electrical Appliances for Local Authority Housing. Compiled by the British Electrical Development Association at the request of the Ministry of Fuel and Power.

The Twenty-ninth Annual Report of the Pedestrians' Association for Road Safety, 1957. 44–45 Fleet Street, E.C.4. No price stated.

The Enforcement of Planning Control. Douglas Frank, assisted by Guy Seward. Estates Gazette Ltd. Price 32*s.* 6*d.*, postage 1*s.* 6*d.* extra.

MISCELLANEOUS INFORMATION

CROWN COPYRIGHT

We have recently been asked by the Board of Trade to publish the following extracts from a Treasury circular dated January 9, 1958.

1. I am directed by the Lords Commissioners of Her Majesty's Treasury to refer to the Copyright Act, 1956, which came into effect on June 1, 1957, and which replaces the Copyright Act, 1911 (with the exception of certain provisions not directly relating to copyright). The new Act re-enacts in substance the provisions of the 1911 Act relating to Crown copyright and, in addition, contains certain new provisions relating to sound recordings and cinematograph films made by or under the direction or control of Her Majesty or of a Government department. It also makes changes in the law relating to privately-owned copyright. Section 39 of the Copyright Act, 1956, deals with Crown copyright and replaces s. 18 of the Copyright Act, 1911.

2. The practice to be followed with regard to Crown copyright was defined, following the Copyright Act, 1911, in a Treasury minute dated June 28, 1912. Although the Copyright Act, 1956, does not generally alter the position of Crown copyright, the increase in the volume and scope of official publications since 1912 and the development of new methods of reproduction make a restatement of policy on this subject desirable.

3. Crown copyright is vested by Royal letters patent in the Controller of Her Majesty's Stationery Office and permission to reproduce from official material, published or unpublished, may be given only by him, or by departments to whom delegated authority to deal with particular classes of applications has been given. Authority to permit reproduction from official films and certain photographs has been delegated by the Controller to the Central Office of Information. All applications for permission to reproduce official material not covered by a specific delegated authority should be referred to the Controller, who will normally consult the department of origin of the material before authorizing its use.

4. For copyright purposes, Government publications may be divided into the following classes:

(1) Bills and Acts of Parliament, statutory rules and orders and statutory instruments.

(2) Other Parliamentary papers, including reports of select committees of both Houses and papers laid before Parliament by statute and by Command.

(3) The official report of the House of Lords and House of Commons debates (*Hansard*).

(4) Non-Parliamentary publications, comprizing all papers of Government departments not contained in the first three classes.

(5) Charts and ordnance maps.

5. It is in the public interest that the information contained in publications falling in the first three classes should be diffused as widely as possible. For these publications no steps will normally be taken to enforce the rights of the Crown in respect of copyright. The rights of the Crown will not, however, lapse and should exceptional circumstances appear to justify such a course, it will be possible to assert them. Copies of Acts of Parliament, statutory rules and orders and statutory instruments, other than those reproduced by the authority of the Stationery Office, must not purport on the face of them to be published by authority. Applicants desiring to make reproductions from House of Lords or House of Commons debates should be warned that any person or body publishing unofficial reports of proceedings in Parliament, even though they are verbatim reports of speeches as reported in the official report, may not enjoy as extensive privilege, in proceedings for defamation, as the full official report would enjoy. Reproductions from *Hansard* in connexion with advertising are not permitted.

6. The fourth class comprises a wide range of Government publications, including many which explain the operation of Acts of Parliament, or make available the results of research, and other activities of departments. It is desirable that this information should be widely known; but official publication is the usual channel for this purpose and, subject to the exercise of the discretions described in the next paragraph. My Lords see no reason why free reproduction should be allowed of this kind of material for commercial purposes. The exercise of Crown copyright is also necessary to protect official material from misuse by unfair or misleading selection, undignified associations, or undesirable use for advertising purposes. The rights of the Crown will therefore normally be enforced for publications in this class, which will bear an indication that Crown copyright is reserved. Acknowledgment of source and of the permission of the Controller of Her Majesty's Stationery Office should be required, and suitable fees imposed for reproduction. In assessing fees the Controller will give consideration to the value of the material to the applicant, and the extent to which private reproduction will affect the revenue from sales of the official publications, subject always to his discretion to waive or reduce fees in appropriate circumstances.

7. The Controller will waive or reduce fees in respect of applications for reproductions for professional, technical or scientific purposes where profit is not a primary purpose of reproduction, and consideration of reduction or remission of fees will also be given to reproductions in works of scholarship, in the journals of learned societies and similar non-profit-making bodies, for educational purposes and in other cases where the need for the fullest dissemination of official information is paramount and the commercial or other aspects are relatively unimportant.

8. The above considerations apply to the material in the fifth class. The routine administration of Crown copyright relating to charts and ordnance maps is subject in practice to appropriate arrangements for delegation between the Controller of Her Majesty's Stationery Office and the Admiralty and Ordnance Survey departments.

ADMINISTRATIVE AND CLERICAL STAFFS

The following announcement is made by the Administrative and Clerical Staffs Whitley Council: Agreement has now been reached between the two sides of the Council that as a preliminary to negotiations on the application of the Noel Hall Report to senior designated grades, an independent fact-finding committee of three should be asked to report on current rates of remuneration of staffs employed on comparable work in other fields of employment.

Sir Noel Hall has accepted an invitation to serve as chairman of the committee. The names of the other two members will be announced shortly.

B.M.A. PROTEST ON SEPARATION OF FUNCTIONS

The public health committee of the British Medical Association is to consider a resolution passed by the executive committee of the Coventry division of the B.M.A. deploring the action of the city council in separating the public health inspectorate from the medical officer of health's jurisdiction.

The division said it must lower the status of the medical officer and was "detrimental to the efficiency of his department in its duties towards the health of the community."

At a recent meeting of the B.M.A. council it was suggested that the action of the city council was "apparently within the law" but it was felt that matters which affected the health of the community should be under the general supervision of a doctor.

The council is to report on the action which has already been taken and has passed the matter to the public health committee "which will take such action as it deemed appropriate."

BEACONTREE PROBATION REPORT

Both Mr. J. R. Train, chairman of the probation committee, and Mr. J. H. Dickenson, principal probation officer for the Beacontree division of Essex, refer in the annual report for 1957 to the serious situation regarding staff. During the year seven members resigned and it has been possible to replace only five. At the beginning of 1958 the department was four officers or 25 *per cent.* below strength. There appears to be a lack of trained personnel available, and steps have been taken to bring the matter before the appropriate authorities.

The year 1957 was one in which a record number of cases were handled, and in order to meet to some extent the difficulty created by shortage of staff it was decided at the annual meeting of the justices that there should be a more highly selective choice of cases for probation, that one year instead of two or three years' probation should be ordered whenever possible, that a generous view should be taken of applications for the discharge of orders, and that economical use should be made of the services of probation officers in matrimonial and social work of the court. These steps may be necessary and the court is making less use of probation, but as Mr. Dickenson points out, it is both socially desirable and economically sound that the fullest use should be made of probation, and every effort is being made not to use alternative methods of treatment which may cost 20 times as much. In spite of the deliberate reduction in the use of

probation, the year ended with only three fewer probation and supervision cases than there were at the beginning of the year. The pressure of work was also felt in dealing with matrimonial cases, nevertheless a higher proportion of reconciliations were brought about. Still better results are looked for when sub offices are opened and the probation officers are in a position to interview clients in pleasanter and more suitable surroundings away from the atmosphere of the court.

FLATLETS FOR OLD PEOPLE

The Ministry of Housing and Local Government has issued to local authorities a handbook on "Flatlets for old people" which has been published by H.M. Stationery Office. The Church Army, housing associations and W.V.S. have done much pioneering work, in co-operation with the local authorities, in providing one-room flatlets in adapted houses but little in this connexion has yet been done by local authorities. The handbook gives examples of some basic types of new flatlets, each with a bed-sitting room and kitchen but with shared bathrooms and W.C.s and shows how they may be grouped into blocks to suit different sites. In a foreward by the Minister he says old people like to keep their independence but they do not want too much housework. Though they want to live in their own way, they do not want to be cut off entirely from all younger people and isolated in an ageing community. That is why he had this handbook prepared. The handbook not only deals with new buildings but gives examples of a similar type of accommodation in conversion schemes. Flatlets provided in this way will qualify for the subsidy of £10 *per annum* which is available for one-bedroom dwellings. In addition, improvement grant is payable for converted accommodation. Schemes of this nature will also qualify for the grant of £30 *per annum* which may be contributed by the county council to housing authorities in providing for active old people.

PORTSMOUTH JUVENILE COURT

We are so accustomed to reports that record an increase in juvenile crime that it is refreshing to read of a happier state of affairs. In the report of the juvenile court panel for the city of Portsmouth, 1957, it is stated that while in 1955 the number of offenders before the court was the highest since statistics were kept, there was a fall of 13·1 *per cent.* in 1956 and a further decline of two *per cent.* in 1957. There was a decrease in indictable offences of 21·4 *per cent.*, but a considerable increase in non-indictable offences. The latter consisted mostly of traffic offences, but there was a noticable increase in offences involving unruly conduct in the form of drunkenness, wilful and malicious damage, the use of threatening or abusive behaviour and the carrying of offensive weapons. There was an increase in sexual offences and in care or protection cases involving sexual misconduct. The report criticises those mothers who go out to work, not because they need the money, but because they prefer the company found at places of employment to the routine of domestic duties and the discharge of responsibilities for the well being of their children. Teachers and others who devote much of their own leisure to the task of helping children to enjoy theirs are doing a great deal to compensate for parental indifference.

The commendable practice of ordering offenders to make some amends has been followed; the report states that of 112 juveniles placed under supervision 38 were ordered to pay compensation or damages.

There is some interesting information about the local attendance centre. A good point is that Mr. S. Woodruffe, the officer-in-charge, has maintained contact with the lads following completion of their attendances and has submitted a final report in each case. It appears that the majority benefited from their instruction. Mr. Woodruffe states that he has seen a number of parents and, on the whole, they have been co-operative and anxious that their sons should do well at the centre. They have been appreciative of the action of the courts, the efforts being made by the probation service and at the attendance centre to assist these boys.

MINISTRY OF EDUCATION ESTIMATES, 1958–59

The memorandum presented to Parliament by the Ministry of Education on the 1958–59 education estimates shows that expenditure is estimated at £382,000,000 being an increase of £26,000,000 over the previous year. Practically all this money is to be disbursed to local education authorities in the form of grants.

The increase is due to five principal factors. There is an increase of some 210,000 in the number of secondary school children offset by a reduction of about 150,000 in the number of these in primary schools. The number of teachers has increased by about 6,000 and staffs of institutions of further education have also been augmented. It is expected that about 200,000 new school places and about two million *sq. ft.* of accommodation in technical colleges will be brought into use in 1958–59. The cost of awards to pupils and students will go up because of increased numbers and larger awards, and lastly wage and price increases must be provided for, including the cost of the fourth step towards equal pay for women teachers.

The Minister gives a very useful table, which might well be copied in local authority budget statements analyzing under each main head of expenditure the increase in the cost of the education service due to (*a*) rise in prices and wages and (*b*) the growth of the service. Total local authority expenditure in 1958–59 is estimated at £595,000,000, an increase of £45,000,000 over the previous year. The main heads listed record an increase of £17 million as due to rises in prices and wages and £24 million caused by the growth of the service.

If current trends continue the pernicious effects of inflation will be less marked in future years.

Another table shows that 13*s.* 9*d.* of every £ will come from taxes and 6*s.* 3*d.* from rates.

ANNUAL REPORT ON ALKALI &c. WORKS

The chief inspector has submitted to the Minister of Housing and Local Government his report on the work done during 1957 in carrying out the provisions of the Alkali &c. Works Regulation Act, 1906, and in the reduction of air pollution caused by industrial processes.

A number of complaints and requests for technical advice and assistance was received relating both to registered and non-registered operations. Most of these came from local authorities. Responsibility for emissions of smoke, grit and dust from registered operations being given to the alkali inspectorate as from December 31, 1956, a general survey of such operations was made. In many instances satisfactory conditions were found already to exist. In the bulk of the remainder the use of gas, oil or coke as fuel or the provision of mechanical stoking will provide a solution.

COUNTY BOROUGH OF NORTHAMPTON: CHIEF CONSTABLE'S REPORT FOR 1957

The authorized establishment of the force is 170, and the actual strength at the end of the year was 157. It is interesting to note that with this number on the active list there are no fewer than 96 police pensioners plus 33 police widow pensioners. One thousand, seven hundred and nine days were lost by sickness, 255 fewer than in 1956, and the force had the good fortune to have no days lost by injuries received on duty. Sixteen recruits were accepted during the year and as there were only 14 losses there was a net gain of two.

Co-operation between departments is promoted by monthly discussions between all members of the force, at which all aspects of police duty are discussed.

There were 973 recorded crimes compared with 898 in 1956. This figure includes 111 what are called "continuing" offences. Two hundred and thirteen persons were prosecuted, of whom 168 were tried summarily and 45 were committed for trial. There was an increase of 40, compared with 1956, in breaking offences, the total being 162. Seventy-six of these were detected and juveniles were concerned in 39, more than half. Taking and driving away offences, at 17, were a little more than half those for 1956.

Five hundred and eighty-seven persons were prosecuted for non-indictable offences, 48 fewer than in 1956. Of these 257 were road traffic offenders. The figure of 587 shows a steady reduction from the very much higher number of 1,011 recorded in 1953. There has been a large drop in road traffic prosecutions, and railway offences and chimney fires have also decreased noticeably.

Good work by the police in examining children's cycles to see whether they are defective has produced a very satisfactory improvement in the standard of maintenance compared with that found in 1953 when the tests were started. In 1957 of 1,161 cycles examined 217 were defective in some way, leaving 944 (81·3 *per cent.*) in good order. This was an increase of 9·2 *per cent.* on 1956 and of 40 *per cent.* on 1953. There was also an improvement in the percentage of children who were able to pass a cycling proficiency test. Two hundred and seventy-seven passed out of 395 who took the test. This gave a percentage of successes of 70, 7·5 *per cent.* better than 1956.

Street accidents totalled 990, one more than in 1956, but 55 fewer than in 1955. Pedal cyclists (264) and motor cyclists (226) were concerned in 490 of these 990 accidents and 132 pedestrians were involved, two being killed. Seven of these pedestrians were injured on pedestrian crossings and three on signal controlled crossings.

CONFERENCES, MEETINGS, ETC.

JUSTICES' CLERKS' SOCIETY

Annual Meeting and Conference

After an interval of 13 years, the Justices' Clerks' Society held their annual meeting and conference in London from June 11 to 13, 1958. The proceedings began with a reception at the County Hall by the chairman of the London county council (Mr. A. E. Samuels) and Mrs. Samuels, who entertained their guests most hospitably. The following morning the chairman of the London county council welcomed the record attendance of upwards of 130 justices' clerks who assembled for the annual meeting. Being the Queen's Official Birthday a message of congratulation was conveyed to Her Majesty and graciously acknowledged.

Presenting the report of the council for the past 12 months, the president (Mr. A. J. Chislett, B.Sc., of Croydon) referred to the alarming increase in crime throughout the country and asked whether it might not be wise, before making things easier for the offender, to call a halt and strike a balance to discover what success our modern penal methods are achieving. Might it not be that the time had come to consider whether the existing bias in favour of the welfare of offenders ought not to be shifted in favour of the long-suffering public? Such questions of vital importance must be solved if the men and women of this country are to be given the security and protection to which they are entitled and which they expect the law to provide. The important part played by magistrates' courts and their clerks in the administration of justice was emphasized by Lord Birkett when he addressed the conference on the Friday morning, for it is in these courts, in his Lordship's view, that the real administration of the law takes place, and it is infinitely important that the standard in those courts should be maintained at the very highest level.

Mr. G. Stanley Green (Manchester county and Eccles borough) has succeeded Mr. Chislett as president, and he will be supported by Mr. Ralph Sweeting, M.A., LL.B. (Wakefield city and Osgoldcross), and Capt. R. H. Langham, M.C., T.D., M.A. (Wallington) as senior and junior vice-presidents respectively. Mr. R. Leslie Hazell (Newington, London) was re-elected honorary treasurer. Mr. B. J. Hartwell, LL.M. (Southport), having been honorary secretary since 1949, had intimated that he would not seek re-election in 1959, and for his final year of office, was joined by Mr. Chislett as joint honorary secretary. Messrs. J. M. A. Edmondson, M.A. (Cheshunt and Waltham Abbey) and E.R. Horsman (Scarborough) were elected to the council for the first time. The Justices' Clerks' Society's prize for 1957 was presented to Mr. Francis Nuttall, who was articled to Mr. T. W. Draycott (Bromley), who now has the distinction of being principal to two prizewinners.

The conference dinner was held at the Mansion House through the courtesy of the lord mayor, who attended, with the sheriffs, and responded for the guests. The toast of the society was proposed by Sir Charles Cunningham, K.B.E., C.B., C.V.O., permanent under-secretary at the Home Office. Other guests included His Honour Judge Leon, the chairman of the London county council, the chairman of the Magistrates' Association, the chief metropolitan magistrate, the vice-president of the Law Society, the clerk of the peace for London and the chairman of the Croydon borough justices. Mr. A. E. Tritschler, LL.B. (Hampstead) cheerfully filled the exacting role of conference secretary.

ASSOCIATION OF SUPERINTENDENTS OF EDUCATION, WELFARE AND ATTENDANCE DEPARTMENTS

The 38th annual conference was held on June 9–11, 1958, at Cheltenham. Mr. Laurence Hague, in his presidential address, surveyed some of the progress made during his 45 years in the local government service. He said, in part, that the job of the education, welfare and attendance officer is today as strenuous both mentally and physically and more exacting than ever. The parents of today have all had the benefit of a full period of compulsory education. They were more democratically minded and, understandably more argumentative. Whereas, in the past, they accepted a statement "this is the law"—now they required the Act references and an interpretation of it.

On the subject of juvenile delinquency and the school attendance service, Mr. Hague said that there was, he thought, some link between the discontinuance of the education grant being tied to average attendance at school, and the lack of importance attached to school attendance by some local education authorities. He knew of one education committee which had not authorized a single school attendance prosecution for years—he did not believe that this could happen with any committee attempting to do its job properly.

Speaking of the post-war "bulge" in secondary schools, Mr. Hague said that zoning would be resorted to in greater measure than ever before, and unpopular though it is with parents, education committees and school attendance officers, without it, committees would be confronted with conditions bordering upon chaos. Forty years had passed since Parliament had first enacted that compulsory part-time education should continue up to 18, and although he knew that it was unlikely to be implemented while the bulge is in the secondary schools, he pleaded that if the Minister is faced with the unfortunate choice of increasing the school-leaving age to 16 or establishing county colleges, he should choose the latter.

Among other papers presented at the conference were "The Magistrate and School Attendance," given by Mr. T. A. Hamilton Baynes, J.P., deputy chairman of justices and chairman of the Birmingham juvenile court, and "The Present Problem of Irregular Attendance at School—What is the Solution?" by Mr. A. Higham (Croydon).

HEALTH CONGRESS

The 65th Congress arranged by the Royal Society of Health was held at Eastbourne recently. At the inaugural meeting, the Minister of Health was installed as president by Dr. J. J. Scott, O.B.E., chairman of the council, but owing to being detained in London the Parliamentary Secretary (Mr. R. Thompson) took his place. In his presidential address (read by Mr. Thompson) the Minister referred to the increased responsibilities of local authorities in meeting the needs of the elderly and stressed the importance of the voluntary visiting undertaken by old people's welfare committees and other organizations. In referring to the report of the Royal Commission on mental health emphasis was laid on the value of day hospitals and the importance of providing community services for the mentally afflicted. Mr. Thompson said legislation would be introduced in the near future based on the recommendations of the Royal Commission.

The Royal Society of Health performs a most useful function—among other activities—in bringing together so many people who are concerned with public health in all its aspects. The conference programme covered a wide range of topics such as Architecture and Town Planning; Food and Nutrition; Health Education; Hospitals; Housing and Estate Management; Mental Health; Occupational Health; Preventive Medicine; Tropical Hygiene and World Health.

So much has been said and written on the report of the Royal Commission on mental health that the time has arrived when action is more important than discussion. It was fitting, however, that it should be considered at the conference. This was a good opportunity of bringing the report before representatives of local authorities as well as hospital bodies and particularly when it was stressed that the implementation of the report must involve very heavy expenditure locally. There is general agreement that many of the elderly patients in mental hospitals could be more suitably dealt with in small homes run by local authorities. But Dr. K. A. Soutar, county medical officer for Surrey, pointed out that considerable capital expenditure would be involved as well as heavy maintenance costs. The problem of mental health was also considered in a paper by Dr. Stuart L. Morrison, of the Social Research Unit of the Medical Research Council, London Hospital. Referring to statistics as to new admissions to mental hospitals he said the the maximum incidence occurs between 20 and 29 years in men and between 25 and 34 years in women; and that first admission rates for single men and women are consistently higher than those for the married.

The health and welfare of the family was the subject of one session at which addresses were given by Dr. J. H. Sheldon, C.B.E., senior physician, Royal Hospital, Wolverhampton; Mr. Dennis Newman, statistician of the Ministry of Pensions and National Insurance; Mrs. Strickland, a health visitor from Brighton; and Dr. G. Wynne Griffith, M.D., county medical officer for Anglesey. Dr. Sheldon in stressing that the aim must be to enable as many old people as possible to live in their own natural surroundings mentioned that in the extremes of age, women increasingly outnumber men. He referred to the need to maintain the morale of old people and showed how important

was this in adequate vision, the care of the feet, diet and incontinence. In emphasizing the fundamental importance of the family to old people, he said the younger generation must be regarded as partners of the community and that when treated in this way there is still plenty of family spirit.

In a session on the role of the out-patient departments, Dr. A. G. Emslie, a consultant physician, pointed out that the problem of the care of the aged was more a social problem than a purely medical one in which the medical officer of health had important duties to undertake. During the same session Dr. John Fry, a general practitioner, asked whether it would not be a reasonable step to bring the medical officer of health back into the clinical field by inviting him to co-ordinate the preventive and social services in the hospital.

A session of special value to housing authorities was on Housing and Estate Management. Mr. A. W. Davey, housing manager, St. Pancras, in referring to the problem of the unsatisfactory tenant said that some 90 *per cent.* of tenants are satisfactory and only about five *per cent.* are " bad payers."

Finally, mention should be made of the conference arranged by the association of public health inspectors. Mr. S. Millward, deputy chief public health inspector, Lytham St. Anne's, in a paper on Food Hygiene, referred to s. 122 of the Food and Drugs Act, 1955, which provides that the Crown is not bound by the Act or regulations or byelaws made thereunder unless applied by an Order in Council. He said so far no such Order had been made. He referred to the anomaly which arises through the Crown being a large employer of labour in hospital kitchens, factory canteens, and airport restaurants. To none of these do the Food Hygiene Regulations apply and to none has the authorized officer of the local authority any power of entry. He argued that there were important reasons why the Act should be extended to Crown property and servants. But he did explain that the Ministry of Health had suggested to hospital bodies that the help of the medical officer of health should be sought in connection with hospital catering hygiene.

PERSONALIA

APPOINTMENTS

Mr. Albert E. Nortrop, deputy borough education officer at Luton, Beds., was inducted as NALGO's president for 1958–59 at the annual conference from June 10–13, last. Mr. Nortrop, at 51, will be the youngest president in the Association's history of 53 years. He is also one of the Association's most experienced leaders. Since 1951, he has been chairman of the Staff Side of the local government National Joint Council, and, in the past year alone, has conducted two successful salary claims—for them and for the officers of the New Towns corporations. Mr. Nortrop entered local government in 1925 as a junior officer in the education department of Doncaster county borough council. He left there in 1939, while personal assistant to the then secretary of education, to become chief clerk of the education department at Luton. Within a year, he was promoted deputy director of education—the post he still holds, though its title has been changed. Mr. Nortrop became a member of NALGO in 1930 and, soon after moving to Luton, became secretary of the Luton branch. In 1944, he was elected to the Association's National Executive Council. Since then, he has served on all its committees, but his main interests have been education and service conditions. After some years as vice-chairman and then chairman of the council's education committee, he was elected a NALGO representative on the National Joint Council for Local Authorities Staffs in 1948, became vice-chairman of the Staff Side in 1950, and has been its chairman and leader since 1951. He is also chairman of the Council's executive committee, and has been a member of the Local Government Examinations board since 1948. Mr. Nortrop has also been chairman of NALGO's local government service conditions committee, and an active member of the Joint Consultative Committee through which the Association maintains contact with the many professional societies of local government officers.

His Honour Maurice N. Drucquer has been appointed to preside as deputy county court Judge of the Hampshire and Isle of Wight Circuit, until a new appointment to succeed the late Judge Alfred Tylor, Q.C., is made. He is 82 years of age and was educated at the City of London School and London University, won the Barstow scholarship in law and was called to the bar in 1904. He became Judge of the Northampton–Coventry county court for nine years from 1928, and held similar appointments for Willesden and Brentford in 1937–45 and Westminster in 1945–50. During the 1939–45 war he was chairman of the Midlands Tribunal of Conscientious Objectors.

Mr. Gilbert Scholfield, F.L.A., formerly deputy city librarian, Winchester, has been appointed city librarian, New Sarum, and will commence his duties on September 1, next. Mr. Scholfield succeeds Mr. William Hughes who will retire on August 31, next.

RETIREMENTS

Mr. Stuart Wellesley Weldon, stipendiary magistrate and coroner of Gibraltar since 1949, has retired. Mr. Weldon, who is in his 66th year, was British Judge, Iraq, 1929–1936. From 1938 until 1948 he held judicial appointments in Palestine, his last being as president of the District Court, Haifa. To the tributes paid him at his last sitting in the magistrates' court, an Army officer who was present added: " No sailor, soldier or airman has ever left your court feeling that justice had not been done." That coming from a serviceman is praise indeed. No appointment of a new stipendiary has so far been announced, and the justices are attending the daily sitting of the magistrates' court. Mr. J. A. Hassan, C.B.E., M.V.O., J.P., formerly deputy coroner, has been appointed coroner, with Mr. J. R. Norton-Amor, M.B.E., the clerk to the justices, as his deputy.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

CORPORAL PUNISHMENT

In the House of Lords, Earl Howe asked the Government whether, in view of the various expressions of opinion by prison officers, benches of magistrates and Her Majesty's Judges, together with at least one debate in the Lords, Her Majesty's Government were of opinion that the reintroduction of corporal punishment for certain offences should now be further considered.

The Lord Chancellor, Viscount Kilmuir, said that the Government did not consider that any adequate ground existed for reversing the legislation of 1948 which implemented the recommendation of an Inter-departmental Committee in 1938 that corporal punishment should be abolished as a judicial penalty or that any useful purpose would be served by holding a further similar inquiry. In their view the most useful form of inquiry at that stage was an analysis and study of the crimes of violence in order to obtain a clearer idea of the nature and scope of the increase in such crimes recorded in the statistics. The Department of Criminal Science at Cambridge University was working on crimes of violence in the Metropolitan Police district, and they were confident that their report would prove a valuable contribution to the study of the problem.

Earl Howe then asked how many more women had got to be attacked, how many more " Teddy-boy " outrages had got to take place, before somebody in Cambridge would be convinced that it was about time they did something to restore corporal punishment.

In reply, the Lord Chancellor recalled that legislation was passed in 1948 abolishing flogging. That legislation was based on the conclusions of the Cadogan Committee which reported in 1938 and those conclusions were fully discussed in Parliament. Before 1948, the only offences of importance for which corporal punishment was available for adults were offences under s. 23 (1) of the Larceny Act, 1916, *i.e.*, robbery while armed, robbery in company with others, and robbery with violence. The number of offences in that category known to the police *decreased* from 1948 to 1955, and in 1956 they were still below the figure of 1948. The 1948 figure was 978 and that in 1956 was 730. That was at a time when other crimes increased.

If it were suggested that flogging should be introduced as a penalty for sexual offences, it should be remembered that corporal punishment had not been available as a penalty for the great majority of offences of that kind since 1861, and that the Inter-departmental Committee reported that all the most experienced witnesses who had given evidence before them had agreed in regarding corporal punishment as a specially unsuitable penalty for sexual offences.

With regard to the suggested reintroduction of birching for juveniles, the committee of 1938 based their recommendations against corporal punishment for juveniles on the practice of the more experienced juvenile courts which, by 1938, had abandoned birching because they found it less effective than other methods. They had drawn a clear distinction between corporal punishment as a judicial penalty and immediate corporal punishment administered in the home or the school by a person in a direct personal relationship with the child. Since then the range of penalties and remedies other than corporal punishment had been greatly extended.

MEDITERRANEAN SCENE—II

Spotorno, Liguria, Italy.
June 15.

Travelling eastwards along the Ligurian coast, from the French frontier towards Genoa, one understands the aptness of the name *La Riviera dei fiori*—"the Riviera of flowers." In particular San Remo, the largest and most famous of the resorts, is now a riot of blossoming colour, and even in mid-winter exports enormous quantities of roses, violets, hyacinths and carnations. The reason for this felicity of climate is not far to seek. First the Maritime Alps, and later the Ligurian Apennines, rise steeply a few miles inland, effectively shutting out the cold winds, frosts and snows of the north. The vegetation on this narrow strip of coast is sub-tropical; palms, olives, cypresses and prickly pears abound. On the mountain-slopes there are groves of pine and fir, and in many places terraced vineyards overlook the shore. Every few miles great rock formations thrust sheerly seawards, forcing the road (and the railway that runs alongside) to tunnel through the steep cliff. Almost every inlet has its little town, perched precariously on the sun-drenched Mediterranean coast.

These towns are not merely pleasure-resorts; many of them have a teeming everyday life and a history going far back to pre-Roman times. One such, two miles to the west from here, is Noli, a tiny place which (out of season) cannot have more than a couple of thousand inhabitants. Yet for 600 years—from 1193 to 1797, as an inscription in its market-place proudly proclaims, it was an independent republic, bringing much of the surrounding countryside beneath its sway. A great part of its mediaeval walls and castle survives, and of the 72 towers that guarded it in the 13th century, five are still standing. The 11th century Church of San Paragorio is of basilica type, and is built over an older subterranean church, traces of which are still visible. The tombs in the interior go back to the eighth century. Such antiquity, however, is no surprise in Noli, which is said to have suffered from the depredations of the Carthaginians at the end of the fourth century B.C., and to have been rebuilt and fortified by the Romans. There is indeed a tradition (which we have not been able to confirm) that a town existed here 700 years before the foundation of Rome—which takes us back to the 15th century B.C. Not content with this, some writers have asserted that the town owed its foundation to "the nephews of Noah, who emigrated westwards, and settled in Liguria 300 years after the Flood."

Discussion of this startling claim must be left to more scholarly pens than ours; but Noli is only one of many score of little towns, along this coast, which have seen the gradual conquest of Italy by Republican Rome; the rise, decline and fall of the Western Empire; the official recognition of Christianity; the invasions of the Goths, and the rule of the Byzantine Exarchs, or Viceroys, representing the Emperor of the East in Constantinople. Then came the Dark Ages—the invasions of Saracens from the south and Franks from the west; the rise of the Papacy as a political power, and (in 800 A.D.) the coronation of Charlemagne as first ruler of the Holy Roman Empire. After this event follow, in succession, the Norman invasions, the Crusades, the rise of the great city states of Genoa, Milan, Florence, Venice, Naples, and many others that have helped to shape Italy's chequered history, culture and art. Finally there are the Napoleonic wars, the Austrian domination, the Risorgimento and the unification of the whole country; and, in recent years, the Fascist Era, the Second World War, occupation (first by the Nazis and later by the Allied Powers), and the return to a democratic system. Two thousand five hundred years of eventful history speak to us from these walls and towers.

We have made some brief reference to the *flora* of the region; the *fauna* are all around us, perched as we are in our small *pensione* away from the town, half a mile up the slope of the hill. Traffic noises there are mercifully muted; but when dusk begins to fall we hear the noises of the countryside—the chirping of thousands of crickets and the croaking of a chorus of frogs from the marshy land around the Saracen castle that rises above us on the summit of the hill. Fireflies dart in and out of the woods and vineyards, flashing like signal-lamps. The only thing conspicuously absent is the lowing of cattle, which could find no pasture in this un-English landscape.

The most fascinating study for the observer is, as always, *Genus Humanum*. At one time, not so many years ago, the great majority of foreign residents on the Mediterranean coast were British subjects—retired professional men and genteel, faded ladies. Financial stringency has ended all that. Today the coastal resorts are teeming with Germans—the spoilt darlings of the continental pleasure-grounds, the *nouveaux riches* of Europe, their prosperity founded on American military strategy, foreign policy and economic aid. Four out of five tourists are Germans, their stolid expressions and heavy limbs contrasting with the vivacious gestures and small, graceful stature of the Italians; the resonant vowels, harsh gutterals and sharp sibilants of their language standing out against the background of the voluble, liquid and euphonious native tongue. Their popularity with the Italians, despite the history of the past 20 years, is something of a mystery, for surely there could be no two nationalities more sharply differentiated in language and custom, manner and appearance, and in their virtues and vices. The fact remains that every other Italian, as a natural thing, speaks German to every foreigner he sees; and the Englishman's mild protest —*non sono tedesco, ma inglese*—produces only a polite shrug and a further stream of German vocables, interspersed perhaps with such English idiomatic expressions as "Goodbye!" and even "Cheerioh!" In post-war Italy every foreigner is presumed to be a German, and the onus is on him to prove the contrary if he can.

A.L.P.

ADDITIONS TO COMMISSIONS

CAMBRIDGE COUNTY

Mrs. Elizabeth Bolgar, Lufters, Gt. Wilbraham, Cambridge.

Mrs. Constance Elizabeth Layng, Three Ways, Stapleford, Cambridge.

Sidney Arthur Martin, Ailric House, Bottisham, Cambridge.

Kenneth Valentine Freeland Morton, Mulberry House, Little Wilbraham, Cambridge.

Samuel Taylor, Little Linton, Linton, Cambridge.

STAFFORD COUNTY

Reuben Clifford, 25 Broad Lane South, Wednesfield, nr. Wolverhampton.

Terence Ernest Cowlishaw, 29 Burnthill Lane, Rugely.

Group Captain Thomas Edwin Hunter Grove, G.M., D.S.C., Russells Bank Farm, Upper Longdon, Rugely.

Bertram Nicholls, 7 Winsor Avenue, Hednesford.

Alan Edward Stott, Orgeave House, Alrewas, nr. Burton-on-Trent.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons Act, 1933—*Fit person order purporting to be effective until the age of* 16—*Effect.*

On January 19, 1954, the magistrates' court having convicted a father of wilful neglect of five children contrary to s. 1 of the Children and Young Persons Act, 1933, acting under the power conferred by s. 63 (1) (*b*) of that Act made fit person orders committing the five children (who had previously been brought before a juvenile court which had made an interim order under s. 67), to the care of the National Children's Home and Orphanage.

Unfortunately evidence was given by an official of the home that it was prepared to accept the children until they attained the age of 16, and although the chairman merely stated in court that fit person orders committing the children to the care of the home would be made, the record in the register sets out the names of the children as being committed to the care of the home "as fit persons until attaining the age of 16 years."

Section 75 (3) of the Act is, however, mandatory that such an order shall remain in force until a child attains the age of 18 years.

The mistake in the register was perpetuated in the five orders which were duly drawn up and signed by the chairman in that each states that the child in question should be committed until he attains the age of 16 years which age is substituted for the printed word "eighteen" in the order. The orders contain a further mistake in that each starts with the words "before the juvenile court" when in fact the orders were made by the magistrates' court.

The position now is that one child has attained the age of 16 and has returned to his parents and the home considers that the question of the order affecting him should not be interfered with, but has asked me as clerk to issue the necessary summonses to lead to the amendment of the orders in respect of the other four children, both as regards the age limit and (if considered necessary) the erroneously described court.

I have a fear that all these orders may be bad, but am comforted by the fact that the chairman certainly did not, in making the orders, refer to any age limit. Presumably summonses, if issued, must be served on the parents and should be preceded by complaints laid by the home. The parents themselves have been expecting to receive their children back at the age of 16 and might resist any amendment proceedings.

A happy way out of the dilemma would be, if it were possible, for the home which proposes to instruct counsel to make an *ex parte* application to the court for amendment, or if the court could take upon itself to amend its orders without any application. I have in mind the case of *Cohen* v. *Cohen* [1947] 2 All E.R. 69, and the cases referred to in it, which would suggest that the orders might properly be amended. I must mention that three of the four original magistrates who sat are still alive.

May I please be advised as to what course should be taken?

VUSOR.

Answer.

The court appears to have intended to make an order to be effective only until the age of 16, and this could not have been a fit person order, since by s. 75, *ibid.*, such an order remains in force until 18. It cannot now be known whether the National Children's Home and Orphanage would have agreed to the making of a fit person order (operative until 18) nor whether the court would have made a fit person order at all if it had appreciated the effect of such an order.

In our opinion the "fit person" orders are bad and anyone acting upon them does so at his peril. We do not think the orders can be varied, and are of the opinion that the parents are entitled to have the children back immediately, without the necessity of applying to the High Court for the orders to be set aside. The point is a difficult one, however, and the matter is not free from doubt. It is possible that fresh care or protection proceedings might be instituted, but the circumstances must have changed since the conviction of the father over four years ago.

In the case of *Cohen* v. *Cohen, supra,* the court included in the written order, by mistake, an order which the court had not made. In this case the order drawn up appears to show correctly the decision of the court to limit the operation of the "fit person" order to 16.

2.—County Council—*Voting at committees—Matters involving expenditure not charged on the councillor's division.*

Under the proviso to s. 75 of the Local Government Act, 1933, county councillors elected for an electoral division consisting wholly of a county district or some part of a county district may not vote on any matter involving only expenditure on account of which the county district is not for the time being liable to be charged. A county councillor is elected for a certain electoral division consisting wholly of a borough which is not subject to the special rate for the county library service. Is his disability limited to matters which relate exclusively to expenditure, or does it extend to all matters concerning the library service? In the case of *Alderton* v. *Essex County Council* (1937) 101 J.P. 434; 3 All E.R. 219, Luxmoore, J. (p. 440 of the first cited report) used words which appear to extend the disability to "matters relating to" [the service concerned, in that case maternity and child welfare]. The point of that case, however, was a different one, *viz.,* whether the prohibition extended to committees and sub-committees. In the instance which is the subject of this question, would the member concerned, being a member of the library sub-committee, be prohibited from voting on such matters as the choice of books for which provision had already been made in the estimates?

It is assumed that the position would not be affected by the fact that the borough makes payment to the county council under a contractual arrangement whereby books are supplied to the borough.

A. RUSTICUS.

Answer.

An argument could be constructed, to the effect that the choice of books within the total of this year's vote might affect next year's vote, *e.g.,* if all the money was spent on novels, so that money would have to be found next year for costly works of reference. But we think this is too artificial to prevail. In *Alderton* v. *Essex County Council, supra,* an agreed summons was taken out, and the question which is now asked was not argued: so far as it arose by inference, it was covered by admissions. The word "matter" is ambiguous; we think the matter is the administration of the library, which involves more than expenditure, and, looking to the purpose of the proviso, that the councillor can vote except upon expenditure. We agree with your final assumption.

3.—Guardianship of Infants—*Custody of infant to third party.*

A husband and wife separated in February, 1947, the husband taking custody of a son, then aged three. A daughter of the marriage was born after the separation. The spouses did not enter into any formal separation agreement. In July, 1947, an application by the wife for maintenance of herself and her baby daughter under the Summary Jurisdiction (Married Women) Act, 1895, was dismissed.

From the time of the separation, the husband retained the custody of his son and resided in the house of the wife's sister until his death in December, 1957. The wife's sister wishes to continue to have the boy with her. He is now aged 13. The wife will not consent to her sister adopting him, but will consent to her sister being appointed his guardian and custodian provided the wife does not have to appear in court. The husband died intestate and it is the wife's present intention to divide his small estate between the two children, but that would not appear to be the concern of the court.

1. Is a court of summary jurisdiction competent to deal with the application for appointment of guardian?

2. Can the sister apply and produce the written consent of the wife, or must the wife make the application?

3. If the wife adheres to her refusal to appear in court, what course is open to the sister? Would some form of document of appointment executed by the wife under seal be effective?

Will you please quote authorities.

Q. KECO VI.

Answer.

The court is given such a wide discretion under the Guardianship of Infants Acts that it would appear lawful for a magistrates' court to give the custody to a third party. *See* 89 J.P.N. 641 where a metropolitan magistrate is reported as having said that he understood the Court of Chancery, in which the jurisdiction had (then) hitherto been exclusively invested would upon the

mother's application consider itself free to give the custody, for the welfare of the infant, to a person other than either parent. *See d'Alton* v. *d'Alton* (1878) 4 P.D. 87; 28 Digest 289, 1435, in which it is reported that custody was given to a third party.

The answers to the specific questions are:

1. Yes. By s. 1 of the Guardianship and Maintenance of Infants Act, 1951, the expression "the court" for the purposes of the Guardianship of Infants Acts, 1886 and 1925, includes a court of summary jurisdiction.

2. The Guardianship of Infants Acts provide for application by the mother or the father of the infant only. We know of no authority for any other person to apply while the infant has a parent. *See* s. 4 (2) of the Guardianship of Infants Act, 1925.

3. It is assumed that the father did not appoint a guardian under s. 5 of the Guardianship of Infants Act, 1925.

The mother might apply by her advocate, if she is willing to do this, but it appears unlikely that a court would determine the matter without hearing the mother's evidence. If the mother is unwilling to apply in this manner, or if the court will not act without her appearing and she will not appear, it would seem that no court order can be obtained.

Apparently the mother is willing to allow the infant to remain with her sister, and the mother might be prepared to sign some form of agreement which would satisfy her sister.

4.—Highway—*Footpath across farm—Mud caused by cattle.*

A public footpath passes through a field belonging to X. The adjacent field also belongs to X and has a crop of kale in it. Cattle belonging to X carry mud from the kale field on to the public footpath at the corner of the field, and the footpath becomes difficult to walk because of the mud. Is the parish council, under whose jurisdiction the footpath falls, responsible for cleaning the footpath? Alternatively can X be made to clean the footpath? POLLIAS.

Answer.

If the damage is such that the path needs repair, the parish council may repair the path under s. 13 (2) of the Local Government Act, 1894, but the council is under no duty to repair. The duty to repair is on the highway authority, to such an extent as is necessary for the ordinary use of the path as a footpath. If the damage amounts to an obstruction, the parish council may complain to the highway authority under s. 26 (4) of that Act. The path will, however, have been dedicated subject to the inconvenience of ordinary agricultural activities, and the farmer cannot be required to clean its surface. Nor can the parish council be held responsible for doing so.

5.—Licensing—*Confirmation of grant—Limits of power of confirming authority.*

Licensing—*Application—Admissibility of evidence of public opinion secured by postcard poll.*

(*a*) If a licence or an ordinary removal has been granted by the licensing committee, can the confirming authority confirm the grant without hearing any evidence (*e.g.*, on the facts outlined by the advocate) if there is no opposition to the application for confirmation.

(*b*) If a firm of brewers applying for a licence circularized householders with reply paid postcards saying whether or not they supported or opposed the application, can those postcards and an analysis of the contents be put in in evidence before the licensing committee, which is not a court and is, therefore, not bound strictly to the rules of evidence Can the same evidence be put in before the confirming authority, which is a court, or could it be objected to on the grounds that it was not the best evidence and that, in fact, the persons who completed these reply paid cards could be called to give evidence (although there were some 8,000 of them).

(*c*) Can the confirming authority bargain with the applicants for confirmation of a new licence and say "We are prepared to confirm this if you will surrender another licence—if not, we are not prepared to confirm the grant?" N. LEX.

Answer.

(*a*) We think that a confirming authority, in the absence of opposition, is entitled to confirm a grant by licensing justices on the basis of a statement by the advocate for the applicant and without hearing evidence.

(*b*) A meeting of the licensing committee is not a court (*Boulter* v. *Kent JJ.* (1897) 61 J.P. 532, and, to a very large extent, questions of the admissibility of evidence are governed by the justices' discretion. A petition signed by householders is often admitted for what it is worth, and we see no reason why the result of a postcard poll should not similarly be admitted. In our opinion, the result of such a postcard poll would have little evidential value. A confirming authority, in our opinion, is similarly entitled either to admit or to reject evidence of such a postcard poll.

(*c*) In our opinion, a confirming authority is not entitled to bargain with an applicant in the manner described.

6.—Licensing—*Club—More than one club registered as using same premises.*

I shall be glad of your valued opinion on a peculiar situation that is about to arise in this division.

A well-known unlicensed restaurant in the town is the headquarters of two or three local organizations. One of these organizations, which meets fortnightly, decided that it might be an amenity if members were able to consume intoxicating liquor with their meal. The proprietors of the restaurant have never been very keen on applying for a licence and the organization using the restaurant as its headquarters decided to register as a club. This has been done. Another organization also using the restaurant as its headquarters has come to the conclusion that it might be an amenity to its members to drink intoxicating liquor with a meal and also wish to register as a club.

I can find nothing in the Licensing Act which specifically prevents two clubs being registered on the same premises, although I should have thought that if not specifically stated, a principle of one registered club to a set of premises was implied. If two clubs were registered on the same premises a situation can be envisaged of club A being prosecuted and the premises disqualified, leaving club B operating on disqualified premises. I would be most grateful for your views on this matter.

ORNIN.

Answer.

There is no reason why more than one club should not occupy and use for the purposes of the clubs the same premises. If each club supplies intoxicating liquor to its members and their guests, each club requires to be registered under s. 143 of the Licensing Act, 1953.

If, as our correspondent points out, one of the clubs is struck off the register and an order is made under s. 144 (4) of the Act that the premises occupied by the club shall not be occupied and used for the purposes of any registered club, the effect of the order will be that any other club occupying the premises will be compelled to find other accommodation.

7.—Private Street Works—*Some works done—Inference that already repairable.*

In 1938 my council carried out private street works under the Private Street Works Act, 1892, in respect of the whole of the carriageway and one of the footpaths in a street in this urban district, and the cost was duly apportioned upon and paid for by the frontagers on both sides of the street. Why the council did not at the time make up the remaining footpath is not clear. The council now propose to make up the remaining footpath, and provisional apportionments will in due course be served on the frontagers on both sides of the street. When these works have been completed, the council will pass a resolution formally adopting the street.

It has recently come to my knowledge that the council have on a number of occasions repaired the carriageway and the footpath which was made up in the year 1938, and have even gone so far as to resurface the carriageway. I appreciate that the council had the power to serve further private street works notices on the frontagers with respect to the carriageway and footpath which has been made up, and I can only assume that the reason why they did not do so was because they felt that the frontagers, having paid for the cost of making up the carriageway and footpath, ought not to be called upon to pay for any further work. I should be glad to know whether you are of the opinion:

(*a*) That the carrying out by the council of the repairs and the resurfacing of the carriageway means in effect that the council have accepted the full responsibility for the repair of the whole street. In other words are you of the opinion that any objections which the frontagers may make when provisional apportionments are served in respect of the remaining footpath would be upheld in court?

(*b*) That the cost incurred by the council in carrying out the repairs and resurfacing could be the subject of a surcharge by the district auditor.

POILIN.

Answer.

(*a*) The council may make up the other footway and charge the frontagers, in our opinion. The street has not yet been adopted, and the works are sufficiently recent to avoid any presumption that the council have repaired the street because the street was a highway repairable by the inhabitants at large. The repairs are otherwise explicable, and were undertaken (presumably) because the completion of making up was delayed by the war.

(*b*) The action of the council was reasonable in the circumstances. The council could not complete the making up during the war and some time after and if they had applied s. 19 of the Public Health Acts Amendment Act, 1907, the frontagers could have required the Act of 1892 to be put into operation. No surcharge, therefore, seems admissible.

8.—Public Health Act, 1936, s. 58 (2)—*Disposal of rubbish after demolition.*

May I ask in relation to P.P. 5 at p. 277, *ante*, whether s. 276 of the Public Health Act, 1936, had been overlooked?

PACAM.

Answer.

Sale of materials is authorized in terms by s. 276, when any surplus has to be paid over to the "person to whom the materials belonged." This point upon subs. (2) is theoretical rather than practical, because the sale of materials would hardly ever cover the council's expenses. But at p. 277 the council were not proposing to sell. They proposed letting the demolition contractor have the materials, when he would sell them, or perhaps re-use some of them, for his own profit. This might be better for the council, and indirectly for the defaulting owner, than removing the materials and then selling under s. 276. We took the view that it was lawful, but, inasmuch as we mentioned the alternative of selling, we agree that s. 276 might have been mentioned for completeness.

9.—Rating and Valuation—*Rating of fisheries—Whether such hereditaments can be void.*

Can you refer me to practical points or other mention in the *J.P. and L.G.R.* on the assessment of fisheries? The particular point in which I am interested is whether at any time it has been established that there can be a void period in respect of the fishery so far as concerns either (i) the rating for general rate purposes; or (ii) the assessment for the purpose of a contribution to be levied in accordance with the provisions of a local fisheries Act. I have referred to *Ryde on Rating* but have not found what I want.

BUSKIR.

Answer.

Some years ago we had a crop of queries about the Rating Act, 1874; all the answers then given on unsettled points seem to have been since confirmed by the High Court in decisions noted by *Ryde*, but we do not find that we have dealt with the question now asked. We do not indeed consider that fishing rights can be void in the rating sense. The conception is appropriate to property comprising a building, but not (surely) to an incorporeal hereditament.

Unless sporting rights have been severed from occupation of the land, s. 3 (2) prevents their being treated as a separate hereditament. They are an element in determining the value of the land over which they are exerciseable (*Eyton* v. *Mold* (1880) 45 J.P. 54; *Towler* v. *Thetford* (1929) 94 J.P. 77), though the value is not necessarily increased thereby—as s. 6 (1) itself shows, where it applies.

Where sporting rights have been severed from the occupation of land, but have not been let (*i.e.*, where a person who owns both the land and the sporting rights parts with the land, but retains the sporting rights, instead of letting them either with the land or separately) the rights are not separately assessable (*see* s. 6 (1) of the Act) but must be dealt with either under s. 6 (1) or s. 6 (3) according to the facts. Even if the owner refrains from using the rights they are not in our opinion to be treated as void.

A lease of sporting rights severed from the occupation of the land must be by deed; either the lessee or the owner may then be treated as the occupier by virtue of s. 6 (2) of the Act of 1874, and this in our opinion applies whether or not the lessee makes use of the rights. Informal lettings are quite usual, but the owner is then to be treated as occupier: *see Swayne* v. *Howells* (1927) 91 J.P. 16.

For purposes of this answer we have ignored complications arising under s. 6 (1) from the derating of agricultural land, and also the theoretical possibility that the bed of a river may not be vested in the same persons as the adjacent land. The answer to your second question might call for perusal of the local Act; we are assuming here that the assessment of contributions thereunder will follow the assessment for rates.

10.—Town and Country Planning—*Permitted Development—General Development Order*, 1950.

Schedule 1, part I, class II of the above order provides *inter alia* that the erection of a fence not exceeding four *ft.* in height where abutting on a road used for vehicular traffic, or seven *ft.* in height in any other case, shall be permitted development. Article 3 of the order provides that permitted development shall be subject to any condition or limitation imposed by sch. 1 in relation to such development. Standard condition 2 in part II of sch. 1 provides that no development shall be carried out which creates an obstruction to the view of persons using any road used for vehicular traffic at or near any bend, corner, junction or intersection where it is likely to cause danger to such persons.

Do you consider

(i) That a fence which it is proposed to erect on private property adjoining a road used for vehicular traffic at right-angles to the road can be said to abut on the road?

(ii) That if the overall height of the fence (being situated on a slope leading down to the road) exceeds four *ft.*, although the fence itself does not exceed four *ft.*, such a fence requires planning permission before it is erected?

(iii) That an intersection of a private drive with a vehicular road constitutes "a junction or intersection," the vehicular road for a considerable distance on both sides of the fence being straight, and the nearest junction or intersection with other vehicular roads being situated some distance away?

A. NOEL.

Answer.

(i) We think so, if it comes up to the boundary of the property.

(ii) In the absence of any direction to measure its height otherwise, the fence itself is in our opinion to be measured.

(iii) Difficulty arises from the double expression, a junction or intersection. Moreover, the expression "road used for vehicular traffic" is ambiguous. On the whole, we are inclined to think that a "junction" in this context is the junction of two public roads, and that there can be an "intersection" when a public road used for vehicular traffic has a private carriage drive running into it. The object of standard condition 2 is to prevent collisions, and a vehicle coming out of a private drive is, when masked by a fence, as dangerous as if the drive was public.